

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COPY

VILLAGE OF ELWOOD, WILL COUNTY,
ILLINOIS,

Petitioner,

v.

T 02 0038

CENTERPOINT INTERMODAL LLC,
BURLINGTON NORTHERN and SANTA FE
RAILWAY COMPANY and STATE OF
ILLINOIS DEPARTMENT OF
TRANSPORTATION

Respondents.

Petition for an order of the Illinois
Commerce Commission authorizing the
establishment of four new grade crossings
along the Industrial Park Lead track and
an associated wye connection track owned
by CenterPointe, Intermodal LLC, at
Baseline Road, Center Industrial Park
Drive, Park Road, and East Access Road
(a/k/a/ Strawn Road) in the Village of
Elwood, Will County, Illinois, directing
interim grade crossing protections and
subsequent installation of automatic
protection devices at certain of the
crossings, the construction of the
crossings proper, and dividing the
cost among the parties.

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Illinois Commerce Commission
RAIL SAFETY SECTION

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S
RESPONSE IN OPPOSITION TO RESPONDENT'S REQUEST FOR EXTENSION OF
TIME TO COMPLY WITH OCTOBER 23, 2002 ORDER**

Now comes respondent, The Burlington Northern and Santa Fe Railway Company ("BNSF"), by its attorneys, Kenneth J. Wysoglad & Associates and for its response in opposition to respondent, CenterPoint Intermodal, LLC's request for extension of time to comply with the October 23, 2002 order of the Illinois Commerce Commission, states as follows:

1. On October 23, 2002 the Illinois Commerce Commission entered its order in the above captioned cause requiring, inter alia, that CenterPoint Intermodal,

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LLC ("CenterPoint") install automatic warning devices consisting of installation of cantilever mounted automatic flashing light signals on the southbound portion of the Baseline Road at grade crossing and installation of standard automatic flashing light signals at the northbound portion of the Baseline Road at grade crossing. Installation of the aforesaid warning devices was to be completed on or before October 23, 2003. Moreover, on or before December 23, 2002 CenterPoint was to submit to Illinois Department of Transportation for its approval detailed cost estimates and general layout plans for installation of the aforesaid warning devices. CenterPoint was also required to submit, on or before April 23, 2003 a written report to the Director of Processing and Information, Transportation Division of the Illinois Commerce Commission stating the progress CenterPoint has made toward accomplishing of the work required to be performed by CenterPoint under the terms of the at issue order.

2. In this case, not only has CenterPoint failed to install the automatic warning devices as ordered by the Illinois Commerce Commission, on information and belief, CenterPoint has also failed to submit to Illinois Department of Transportation for its approval copies of the detailed cost estimates and general lay out plans for installation of the warning devices and has failed to provide the Illinois Commerce Commission with timely six month progress reports.
3. Instead of proceeding with installation of the automatic warning devices as required by the terms of the Illinois Commerce Commission order, respondent, CenterPoint unilaterally determining that automatic grade

crossing warning devices were not presently warranted at the Baseline Road at grade crossing, contrary to the findings of the Illinois Commerce Commission.

4. CenterPoint attempts to justify its inaction by suggestion that there is insufficient vehicular traffic over the Baseline at grade crossing to warrant the installation of automatic warning devices. This suggestion is made without the benefit of any traffic studies or traffic counts obtained or prepared by CenterPoint. In any case, it is not up to CenterPoint to decide when the volume of vehicular traffic warrants installation of automatic warning devices at the Baseline Road at grade crossing. That decision, of course, rests solely with the Illinois Commerce Commission who rendered its decision on October 23, 2002 when it required CenterPoint to proceed with the installation of automatic warning devices at the Baseline Road at grade crossing.
5. Based on the record in this case, it is clear that CenterPoint had no intention of proceeding with installation of the automatic warning devices at the Baseline Road at grade crossing as ordered by the Illinois Commerce Commission. The record in this case was marked "Heard and Taken" on August 22, 2002. At no time between the close of the record in this case and the issuance of the order by the Illinois Commerce Commission on October 23, 2002 did CenterPoint seek to reopen the case or otherwise advise the parties and the Illinois Commerce Commission of a "change in circumstance" which would justify relief from that portion of the Illinois Commerce Commission order requiring CenterPoint to proceed with the installation of

the automatic warning devices. Moreover, as noted above, CenterPoint was required to provide Illinois Department of Transportation, on or before December 23, 2002, detailed cost estimates and general layout plans relating to installation of the aforesaid automatic warning devices. Again, CenterPoint did not seek administrative relief from this obligation based on any "changed circumstances" but instead elected to ignore this obligation.

6. The situation in this case is clear. CenterPoint wanted authority from the Illinois Commerce Commission to install the Baseline Road at grade crossing. Having received such authority, CenterPoint proceeded with the Baseline Road at grade crossing installation. However, CenterPoint did not want to assume the obligation of installing automatic warning devices nor did it wish to assume any portion of the cost associated with the warning device installation. As a result, CenterPoint simply ignored that portion of the Illinois Commerce Commission order. In an effort to mitigate the consequences of its inaction, CenterPoint cavalierly suggests that the Baseline Road at grade crossing remains reasonably safe as BNSF is required to hand flag all rail traffic over the crossing location until such time as the automatic warning devices are installed. In making this observation, CenterPoint fails to acknowledge the unnecessary risk exposure to BNSF and its employees made necessary by CenterPoint's failure to comply with the terms of the Illinois Commerce Commission order.
7. The requirement that BNSF hand flag the at grade crossing was intended by the Illinois Commerce Commission to be an interim safety measure only and not an indefinite or perpetual safety measure. BNSF has assumed the risks

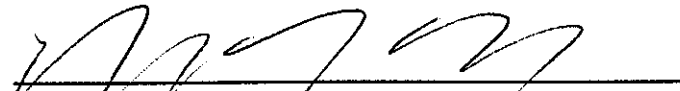
associated with hand flagging the at issue crossing for the full length of time required by the October 23, 2002 order of the Illinois Commerce Commission. Any further risks associated with continued hand flagging of the Baseline Road at grade crossing should now be assumed by CenterPoint. As a condition of granting CenterPoint additional time to complete installation of the automatic warning devices, BNSF would request that CenterPoint be required to obtain a policy of railroad protective liability insurance for the benefit of BNSF to ensure against the risk of any loss associated with personal injury or property damage that may arise due to the continued necessity for hand flagging the subject at grade crossing.

8. Additionally, in its motion CenterPoint has requested an additional eighteen (18) months in which to complete the warning device installation, again indicating that CenterPoint has initiated no steps in proceeding with the warning device installation. During the August 22, 2002 public hearing in this cause, CenterPoint presented evidence that the warning device installation could be completed within a twelve (12) month period. In fact, on information and belief, BNSF believes that the warning device installation could in fact be completed within a six (6) to nine (9) month time frame. Should the Illinois Commerce Commission grant CenterPoint's petition for additional time, CenterPoint should be required to complete the warning device installation within a six to nine month time period.

Wherefore, The Burlington Northern and Santa Fe Railway Company prays that the Illinois Commerce Commission enters an order compelling CenterPoint to immediately proceed with installation of the automatic warning devices at the Baseline Road at grade

crossing as previously ordered by the Illinois Commerce Commission; that the installation be completed within a six to nine month time period commencing from October 23, 2003; and that as a condition of the grant of additional time that CenterPoint be required to purchase, at its sole cost, a policy of railroad protective liability insurance or other appropriate insurance for the benefit and protection of The Burlington Northern and Santa Fe Railway Company to cover all risks of personal injury or property damage associated with or arising out of The Burlington Northern and Santa Fe Railway Company's continued obligation to hand flag the Baseline Road at grade crossing.

KENNETH J. WYSOGLAD & ASSOCIATES


Michael L. Sazdanoff

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Kenneth J. Wysoglad & Associates
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(312) 441-0333

PROOF OF SERVICE

Michael L. Sazdanoff, being first duly sworn on oath, deposes and says that on the 22 day of OCTOBER, 2003, he caused to be served, a true and correct copy of **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S RESPONSE IN OPPOSITION TO RESPONDENT'S REQUEST FOR EXTENSION OF TIME TO COMPLY WITH OCTOBER 23, 2002 ORDER** upon:

Administrative Law Judge June B. Tate
Illinois Commerce Commission
160 N. LaSalle Street, Suite C 800
Chicago, Illinois 60601

Mr. Henry Humphries
Railroad Section
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, Illinois 62701

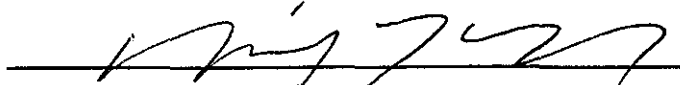
Mr. Edward P. Graham
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Mr. James Easterly
Director, Division of Highways
Illinois Department of Transportation
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Mr. Kevin P. Breslin
Katz, Randall, Weinberg & Richmond
333 N. Wacker Drive, Suite 1800
Chicago, IL 60606

Mr. Jeff Harpring
Rail Safety Engineer
Illinois Department of Transportation
Bureau of Local Roads and Streets
2300 S. Dirksen Parkway
Springfield, IL 62764

by depositing same in the U.S. Mail depository located at Adams and Clinton Streets, Chicago, Illinois in an envelope(s) with first-class postage, prepaid.

A handwritten signature in dark ink, appearing to be "M. Sazdanoff", written over a horizontal line.